

AMENDED IN ASSEMBLY APRIL 3, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1889

Introduced by Assembly Member Hagman

**(Coauthors: Assembly Members Chávez, Donnelly, Harkey, Jones,
Maienschein, Olsen, Patterson, Wieckowski, and Wilk)**

(Coauthor: Senator Vidak)

February 19, 2014

An act to amend Sections 17935, 17941, 17948, and 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, as tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1889, as amended, Hagman. Minimum franchise tax: *annual tax*: small business.

Existing law generally imposes an annual minimum franchise tax of \$800, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, and on every limited partnership, limited liability partnership, and limited liability company registered, qualified to transact business, or doing business in this state, as specified. Existing law exempts a corporation from the payment of minimum tax in its first taxable year.

Existing law imposes an annual minimum franchise tax, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state. Existing law exempts a corporation that incorporates or qualifies to do business in this state from the payment of the minimum franchise tax in its first taxable year.

Existing law imposes an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability company and limited liability partnership doing business in this state. In addition, existing law requires every limited partnership that has filed a certificate with the Secretary of State and every foreign limited partnership that has registered with the Secretary of State, every limited liability company if the articles of organization have been accepted by, or a certificate of registration has been issued by, the Secretary of State, and every registered limited liability partnership and every foreign limited liability partnership that has registered with the Secretary of State, to pay an annual tax in an amount equal to the minimum franchise tax.

This bill would reduce that minimum franchise or annual tax, as provided in the 2nd taxable year, for a new corporation, and the first taxable year for a new limited partnership, new limited liability partnership, and new limited liability company that is a small business, as which is defined as a business entity with gross receipts of \$5000 or less, as specified.

This bill would take effect immediately as a tax levy.

*Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.*

The people of the State of California do enact as follows:

1 SECTION 1. Section 17935 of the Revenue and Taxation Code
2 is amended to read:
3 17935. (a) For each taxable year beginning on or after January
4 1, 1997, every limited partnership doing business in this state (as
5 defined by Section 23101) and required to file a return under
6 Section 18633 shall pay annually to this state a tax for the privilege
7 of doing business in this state in an amount equal to the applicable
8 amount specified in Section 23153.
9 (b) (1) In addition to any limited partnership that is doing
10 business in this state and therefore is subject to the tax imposed
11 by subdivision (a), for each taxable year beginning on or after
12 January 1, 1997, every limited partnership that has executed,
13 acknowledged, and filed a certificate of limited partnership with
14 the Secretary of State pursuant to Section 15621 or 15902.01 of
15 the Corporations Code, and every foreign limited partnership that
16 has registered with the Secretary of State pursuant to Section 15692

1 or 15909.01 of the Corporations Code, shall pay annually the tax
2 prescribed in subdivision (a). The tax shall be paid for each taxable
3 year, or part thereof, until a certificate of cancellation is filed on
4 behalf of the limited partnership with the office of the Secretary
5 of State pursuant to Section 15623, 15696, 15902.03, or 15909.07
6 of the Corporations Code.

7 (2) If a taxpayer files a return with the Franchise Tax Board that
8 is designated its final return, that board shall notify the taxpayer
9 that the tax imposed by this chapter is due annually until a
10 certificate of cancellation is filed with the Secretary of State
11 pursuant to Section 15623, 15696, 15902.03, or 15909.07 of the
12 Corporations Code.

13 (c) The tax imposed by this chapter shall be due and payable
14 on the date the return is required to be filed under former Section
15 18432 or 18633.

16 (d) For purposes of this section, "limited partnership" means
17 any partnership formed by two or more persons under the laws of
18 this state or any other jurisdiction and having one or more general
19 partners and one or more limited partners.

20 (e) Notwithstanding subdivision (b), any limited partnership
21 that ceased doing business prior to January 1, 1997, filed a final
22 return with the Franchise Tax Board for a taxable year ending
23 before January 1, 1997, and filed a certificate of dissolution with
24 the Secretary of State pursuant to Section 15623 of the
25 Corporations Code prior to January 1, 1997, shall not be subject
26 to the tax imposed by this chapter for any period following the
27 date the certificate of dissolution was filed with the Secretary of
28 State, but only if the limited partnership files a certificate of
29 cancellation with the Secretary of State pursuant to Section 15623
30 of the Corporations Code. In the case where a notice of proposed
31 deficiency assessment of tax or a notice of tax due (whichever is
32 applicable) is mailed after January 1, 2001, the first sentence of
33 this subdivision shall not apply unless the certificate of cancellation
34 is filed with the Secretary of State not later than 60 days after the
35 date of the mailing of the notice.

36 (f) (1) Notwithstanding subdivisions (a) and (b), for taxable
37 years beginning on or after January 1, 2015, every new limited
38 partnership that is a small business shall pay to the state a ~~minimum~~
39 ~~franchise~~ *an annual* tax of four hundred dollars (\$400) for its first
40 taxable year.

(2) For purposes of this subdivision:

(A) “Gross receipts, less returns and allowances reportable to this state,” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(B) “New limited partnership” means a limited partnership that is organized under the laws of this state or has qualified to transact intrastate business in this state that begins business operations at or after the time of its organization. “New limited partnership” does not include any limited partnership that began business operations as, *or acquired its business operations from*, a sole proprietorship, a limited liability company, *general partnership*, a corporation, or any other form of business entity prior to its organization *or that acquired its business operations from a partnership*. This subdivision shall not apply to any limited partnership that reorganizes solely for the purpose of reducing its ~~minimum franchise annual~~ tax.

(C) “Small business” means a limited partnership that ~~reasonably estimates that it~~ will have gross receipts, less returns and allowances, reportable to this state for the taxable year of five thousand dollars (\$5,000) or less.

(3) This subdivision shall *not* apply to a limited partnership that does not file a timely return.

SEC. 2. Section 17941 of the Revenue and Taxation Code is amended to read:

17941. (a) For each taxable year beginning on or after January 1, 1997, a limited liability company doing business in this state (as defined in Section 23101) shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in subdivision (d) of Section 23153 for the taxable year.

(b) (1) In addition to any limited liability company that is doing business in this state and is therefore subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, a limited liability company shall pay annually the tax prescribed in subdivision (a) if articles of organization have been accepted, or a certificate of registration has been issued, by the office of the Secretary of State. The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation of

1 registration or of articles of organization is filed on behalf of the
2 limited liability company with the office of the Secretary of State.

3 (2) If a taxpayer files a return with the Franchise Tax Board that
4 is designated as its final return, the Franchise Tax Board shall
5 notify the taxpayer that the annual tax shall continue to be due
6 annually until a certificate of dissolution is filed with the Secretary
7 of State pursuant to Section 17707.08 of the Corporations Code
8 or a certificate of cancellation is filed with the Secretary of State
9 pursuant to Section 17708.06 of the Corporations Code.

10 (c) The tax assessed under this section shall be due and payable
11 on or before the 15th day of the fourth month of the taxable year.

12 (d) For purposes of this section, “limited liability company”
13 means an organization, other than a limited liability company that
14 is exempt from the tax and fees imposed under this chapter
15 pursuant to Section 23701h or ~~Section 23701x~~, that is formed by
16 one or more persons under the law of this state, any other country,
17 or any other state, as a “limited liability company” and that is not
18 taxable as a corporation for California tax purposes.

19 (e) Notwithstanding anything in this section to the contrary, if
20 the office of the Secretary of State files a certificate of cancellation
21 pursuant to Section 17707.02 of the Corporations Code for any
22 limited liability company, then paragraph (1) of subdivision (f) of
23 Section 23153 shall apply to that limited liability company as if
24 the limited liability company were properly treated as a corporation
25 for that limited purpose only, and paragraph (2) of subdivision (f)
26 of Section 23153 shall not apply. Nothing in this subdivision
27 entitles a limited liability company to receive a reimbursement for
28 any annual taxes or fees already paid.

29 (f) (1) Notwithstanding any provision of this section to the
30 contrary, a limited liability company that is a small business solely
31 owned by a deployed member of the United States Armed Forces
32 shall not be subject to the tax imposed under this section for any
33 taxable year the owner is deployed and the limited liability
34 company operates at a loss or ceases operation.

35 (2) The Franchise Tax Board may promulgate regulations as
36 necessary or appropriate to carry out the purposes of this
37 subdivision, including a definition for “ceases operation.”

38 (3) For the purposes of this subdivision, all of the following
39 definitions apply:

1 (A) “Deployed” means being called to active duty or active
2 service during a period when a Presidential Executive order
3 specifies that the United States is engaged in combat or homeland
4 defense. “Deployed” does not include either of the following:

- 5 (i) Temporary duty for the sole purpose of training or processing.
- 6 (ii) A permanent change of station.

7 (B) “Operates at a loss” means a limited liability company’s
8 expenses exceed its receipts.

9 (C) “Small business” means a limited liability company with
10 total income from all sources derived from, or attributable, to the
11 state of two hundred fifty thousand dollars (\$250,000) or less.

12 (4) This subdivision shall become inoperative for taxable years
13 beginning on or after January 1, 2018.

14 (g) (1) Notwithstanding any provision of this section to the
15 contrary, for taxable years beginning on or after January 1, 2015,
16 every new limited liability company that is a small business in a
17 taxable year shall pay to the state ~~a minimum franchise~~ *an annual*
18 tax of four hundred dollars (\$400) for its first taxable year.

19 (2) For purposes of this subdivision:

20 (A) “Gross receipts, less returns and allowances reportable to
21 this state,” means the sum of the gross receipts from the production
22 of business income, as defined in subdivision (a) of Section 25120,
23 and the gross receipts from the production of nonbusiness income,
24 as defined in subdivision (d) of Section 25120.

25 (B) “New limited liability company” means a limited liability
26 company that is organized under the laws of this state or has
27 qualified to transact intrastate business in this state that begins
28 business operations at or after the time of its organization. “New
29 limited liability company” does not include any limited liability
30 company that began business operations as, *or acquired its business*
31 *operations from*, a sole proprietorship, a partnership, a corporation,
32 or any other form of business entity prior to its organization *or*
33 *that acquired its business operations from a limited liability*
34 *company*. This subdivision shall not apply to any limited liability
35 company that reorganizes solely for the purpose of reducing its
36 ~~minimum franchise~~ *annual* tax.

37 (C) “Small business” means a limited liability company that
38 reasonably estimates that it will have gross receipts, less returns
39 and allowances, reportable to this state for the taxable year of five
40 thousand dollars (\$5,000) or less.

1 (3) This subdivision shall *not* apply to a limited liability
2 company that does not file a timely return.

3 (4) *If the limited liability company's gross receipts, as*
4 *determined by subparagraph (A) of paragraph (2), exceed five*
5 *thousand dollars (\$5,000), an additional tax in the amount equal*
6 *to four hundred dollars (\$400) for the taxable year shall be due*
7 *and payable by the corporation on the due date of its return,*
8 *without regard to extension, for that year.*

9 SEC. 3. Section 17948 of the Revenue and Taxation Code is
10 amended to read:

11 17948. (a) For each taxable year beginning on or after January
12 1, 1997, every limited liability partnership doing business in this
13 state (as defined in Section 23101) and required to file a return
14 under Section 18633 shall pay annually to the Franchise Tax Board
15 a tax for the privilege of doing business in this state in an amount
16 equal to the applicable amount specified in paragraph (1) of
17 subdivision (d) of Section 23153 for the taxable year.

18 (b) In addition to any limited liability partnership that is doing
19 business in this state and therefore is subject to the tax imposed
20 by subdivision (a), for each taxable year beginning on or after
21 January 1, 1997, every registered limited liability partnership that
22 has registered with the Secretary of State pursuant to Section 16953
23 of the Corporations Code and every foreign limited liability
24 partnership that has registered with the Secretary of State pursuant
25 to Section 16959 of the Corporations Code shall pay annually the
26 tax prescribed in subdivision (a). The tax shall be paid for each
27 taxable year, or part thereof, until any of the following occurs:

28 (1) A notice of cessation is filed with the Secretary of State
29 pursuant to subdivision (b) of Section 16954 or 16960 of the
30 Corporations Code.

31 (2) A foreign limited liability partnership withdraws its
32 registration pursuant to subdivision (a) of Section 16960 of the
33 Corporations Code.

34 (3) The registered limited liability partnership or foreign limited
35 liability partnership has been dissolved and finally wound up.

36 (c) The tax assessed under this section shall be due and payable
37 on the date the return is required to be filed under Section 18633.

38 (d) If a taxpayer files a return with the Franchise Tax Board that
39 is designated as its final return, the Franchise Tax Board shall
40 notify the taxpayer that the annual tax shall continue to be due

1 annually until a certificate of cancellation is filed with the Secretary
2 of State pursuant to Section 16954 or 16960 of the Corporations
3 Code.

4 (e) (1) Notwithstanding subdivisions (a) and (b), for taxable
5 years beginning on or after January 1, 2015, a new limited liability
6 partnership that is a small business shall pay to the state ~~a minimum~~
7 ~~franchise~~ *an annual* tax of four hundred dollars (\$400) for its first
8 taxable year.

9 (2) For purposes of this subdivision:

10 (A) “Gross receipts, less returns and allowances reportable to
11 this state,” means the sum of the gross receipts from the production
12 of business income, as defined in subdivision (a) of Section 25120,
13 and the gross receipts from the production of nonbusiness income,
14 as defined in subdivision (d) of Section 25120.

15 (B) “New limited liability partnership” means a limited liability
16 partnership that is organized under the laws of this state or has
17 qualified to transact intrastate business in this state that begins
18 business operations at or after the time of its organization. “New
19 limited liability partnership” does not include any limited liability
20 partnership that began business operations as, *or acquired its*
21 *business operations from*, a sole proprietorship, a limited liability
22 company, a corporation, *a partnership*, or any other form of
23 business entity prior to its organization *or that acquired its business*
24 *operations from a limited liability partnership*. This subdivision
25 shall not apply to any limited partnership that reorganizes solely
26 for the purpose of reducing its ~~minimum franchise~~ *annual* tax.

27 (C) “Small business” means a limited partnership that ~~reasonably~~
28 ~~estimates that it~~ will have gross receipts, less returns and
29 allowances, reportable to this state for the taxable year of five
30 thousand dollars (\$5,000) or less.

31 (3) This subdivision shall *not* apply to a limited liability
32 partnership that does not file a timely return.

33 SEC. 4. Section 23153 of the Revenue and Taxation Code is
34 amended to read:

35 23153. (a) Every corporation described in subdivision (b) shall
36 be subject to the minimum franchise tax specified in subdivision
37 (d) from the earlier of the date of incorporation, qualification, or
38 commencing to do business within this state, until the effective
39 date of dissolution or withdrawal as provided in Section 23331 or,

1 if later, the date the corporation ceases to do business within the
2 limits of this state.

3 (b) Unless expressly exempted by this part or the California
4 Constitution, subdivision (a) shall apply to each of the following:

5 (1) Every corporation that is incorporated under the laws of this
6 state.

7 (2) Every corporation that is qualified to transact intrastate
8 business in this state pursuant to Chapter 21 (commencing with
9 Section 2100) of Division 1 of Title 1 of the Corporations Code.

10 (3) Every corporation that is doing business in this state.

11 (c) The following entities are not subject to the minimum
12 franchise tax specified in this section:

13 (1) Credit unions.

14 (2) Nonprofit cooperative associations organized pursuant to
15 Chapter 1 (commencing with Section 54001) of Division 20 of the
16 Food and Agricultural Code that have been issued the certificate
17 of the board of supervisors prepared pursuant to Section 54042 of
18 the Food and Agricultural Code. The association shall be exempt
19 from the minimum franchise tax for five consecutive taxable years,
20 commencing with the first taxable year for which the certificate
21 is issued pursuant to subdivision (b) of Section 54042 of the Food
22 and Agricultural Code. This paragraph only applies to nonprofit
23 cooperative associations organized on or after January 1, 1994.

24 (d) (1) Except as provided in paragraph (2), paragraph (1) of
25 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
26 of Section 23181, and paragraph (1) of subdivision (c) of Section
27 23183, corporations subject to the minimum franchise tax shall
28 pay annually to the state a minimum franchise tax of eight hundred
29 dollars (\$800).

30 (2) The minimum franchise tax shall be twenty-five dollars
31 (\$25) for each of the following:

32 (A) A corporation formed under the laws of this state whose
33 principal business when formed was gold mining, which is inactive
34 and has not done business within the limits of the state since 1950.

35 (B) A corporation formed under the laws of this state whose
36 principal business when formed was quicksilver mining, which is
37 inactive and has not done business within the limits of the state
38 since 1971, or has been inactive for a period of 24 consecutive
39 months or more.

1 (3) For purposes of paragraph (2), a corporation shall not be
2 considered to have done business if it engages in business other
3 than mining.

4 (e) Notwithstanding subdivision (a), for taxable years beginning
5 on or after January 1, 1999, and before January 1, 2000, every
6 “qualified new corporation” shall pay annually to the state a
7 minimum franchise tax of five hundred dollars (\$500) for the
8 second taxable year. This subdivision shall apply to any corporation
9 that is a qualified new corporation and is incorporated on or after
10 January 1, 1999, and before January 1, 2000.

11 (1) The determination of the gross receipts of a corporation, for
12 purposes of this subdivision, shall be made by including the gross
13 receipts of each member of the commonly controlled group, as
14 defined in Section 25105, of which the corporation is a member.

15 (2) “Gross receipts, less returns and allowances reportable to
16 this state,” means the sum of the gross receipts from the production
17 of business income, as defined in subdivision (a) of Section 25120,
18 and the gross receipts from the production of nonbusiness income,
19 as defined in subdivision (d) of Section 25120.

20 (3) “Qualified new corporation” means a corporation that is
21 incorporated under the laws of this state or has qualified to transact
22 intrastate business in this state, that begins business operations at
23 or after the time of its incorporation and that reasonably estimates
24 that it will have gross receipts, less returns and allowances,
25 reportable to this state for the taxable year of one million dollars
26 (\$1,000,000) or less. “Qualified new corporation” does not include
27 any corporation that began business operations as a sole
28 proprietorship, a partnership, or any other form of business entity
29 prior to its incorporation. This subdivision shall not apply to any
30 corporation that reorganizes solely for the purpose of reducing its
31 minimum franchise tax.

32 (4) This subdivision shall not apply to limited partnerships, as
33 defined in Section 17935, limited liability companies, as defined
34 in Section 17941, limited liability partnerships, as described in
35 Section 17948, charitable organizations, as described in Section
36 23703, regulated investment companies, as defined in Section 851
37 of the Internal Revenue Code, real estate investment trusts, as
38 defined in Section 856 of the Internal Revenue Code, real estate
39 mortgage investment conduits, as defined in Section 860D of the
40 Internal Revenue Code, qualified Subchapter S subsidiaries, as

1 defined in Section 1361(b)(3) of the Internal Revenue Code, or to
2 the formation of any subsidiary corporation, to the extent
3 applicable.

4 (5) For any taxable year beginning on or after January 1, 1999,
5 and before January 1, 2000, if a corporation has qualified to pay
6 five hundred dollars (\$500) for the second taxable year under this
7 subdivision, but in its second taxable year, the corporation's gross
8 receipts, as determined under paragraphs (1) and (2), exceed one
9 million dollars (\$1,000,000), an additional tax in the amount equal
10 to three hundred dollars (\$300) for the second taxable year shall
11 be due and payable by the corporation on the due date of its return,
12 without regard to extension, for that year.

13 (f) (1) (A) Notwithstanding subdivision (a), every corporation
14 that incorporates or qualifies to do business in this state on or after
15 January 1, 2000, shall not be subject to the minimum franchise tax
16 for its first taxable year.

17 (B) Notwithstanding subdivision (a), every corporation that is
18 a new corporation in taxable years beginning on or after January
19 1, 2015, and is a small business in its first and second taxable year
20 shall pay to the state a minimum franchise tax of four hundred
21 dollars (\$400) for its second taxable year.

22 (i) For purposes of this ~~paragraph~~ *subparagraph*:

23 (I) "Gross receipts, less returns and allowances reportable to
24 this state," means the sum of the gross receipts from the production
25 of business income, as defined in subdivision (a) of Section 25120,
26 and the gross receipts from the production of nonbusiness income,
27 as defined in subdivision (d) of Section 25120.

28 (II) "New corporation" means a corporation that is incorporated
29 under the laws of this state or has qualified to transact intrastate
30 business in this state that begins business operations at or after the
31 time of its incorporation. "New corporation" does not include any
32 corporation that began business operations as, *or acquired its*
33 *business operations from*, a sole proprietorship, a partnership,
34 limited liability company, or any other form of business entity
35 prior to its incorporation *or that acquired its business operations*
36 *from a corporation*. This paragraph shall not apply to any
37 corporation that reorganizes solely for the purpose of reducing its
38 minimum franchise tax.

39 (III) "Small business" means a corporation that reasonably
40 estimates that it will have gross receipts, less returns and

allowances, reportable to this state for the taxable year of five thousand dollars (\$5,000) or less.

(ii) ~~(I) This paragraph~~ *subparagraph* shall *not* apply to a corporation that does not file a timely return.

(II) If the corporation's gross receipts, as determined by subclause (I) of clause (i) of subparagraph (B), exceed five thousand dollars (\$5,000), an additional tax in the amount equal to four hundred dollars (\$400) for the taxable year shall be due and payable by the corporation on the due date of its return, without regard to extension, for that year.

(2) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as described in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, and qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

(3) This subdivision shall not apply to any corporation that reorganizes solely for the purpose of avoiding payment of its minimum franchise tax.

(g) Notwithstanding subdivision (a), a domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (b) of Section 1905 of the Corporations Code, prior to its amendment by the act amending this subdivision, and that does not thereafter do business shall not be subject to the minimum franchise tax for taxable years beginning on or after the date of that filing.

(h) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.

(i) (1) Notwithstanding subdivision (a), a corporation that is a small business solely owned by a deployed member of the United States Armed Forces shall not be subject to the minimum franchise tax for any taxable year the owner is deployed and the corporation operates at a loss or ceases operation.

1 (2) The Franchise Tax Board may promulgate regulations as
2 necessary or appropriate to carry out the purposes of this
3 subdivision, including a definition for “ceases operation.”

4 (3) For the purposes of this subdivision, all of the following
5 definitions apply:

6 (A) “Deployed” means being called to active duty or active
7 service during a period when a Presidential Executive order
8 specifies that the United States is engaged in combat or homeland
9 defense. “Deployed” does not include either of the following:

10 (i) Temporary duty for the sole purpose of training or processing.

11 (ii) A permanent change of station.

12 (B) “Operates at a loss” means negative net income as defined
13 in Section 24341.

14 (C) “Small business” means a corporation with total income
15 from all sources derived from, or attributable, to the state of two
16 hundred fifty thousand dollars (\$250,000) or less.

17 (4) This subdivision shall become inoperative for taxable years
18 beginning on or after January 1, 2018.

19 SEC. 5. This act provides for a tax levy within the meaning of
20 Article IV of the Constitution and shall go into immediate effect.